## PUBLIC COMMENTS ON WDHA AMENDMENT AND BLM'S RESPONSES TO THE COMMENTS

## INTRODUCTION

The public comment period for this RMP amendment was from June 8, to July 8, 2005. A total of 17 comment letters were received. We have responded to all of these letters in the format described below. We are required to print comment letters received from local, state and other federal agencies. Copies of these letters are printed at the end of this Appendix. Copies of the other comment letters are available upon request from the White River Field Office.

Every comment letter was read and comments identified. The appropriate Team Member was then assigned the comments relating to their specialty in order to develop a response. When the responses were complete, an effort was made to combine comments that contained the same or similar subject matter. Table A-1 contains a list of commentors and affiliation, the number of comments contained in each letter, and the number assigned to their specific comment(s). Individual commentors should be able to track their comments from the following table by finding their name and noting the comment numbers assigned to their comment. The comment and response can then be found by looking up the comment number in the section following Table A-1. Combining the same or similar comments resulted in reducing the number of overall responses. The reader of these comments needs to recognize that the comments and responses were under the context of a proposed decision for retention of 29-60 horses and establishment of the West Douglas Herd Area.

Some of the comments discussed subjects outside of the scope of this amendment, with several relating to National Wild Horse Program policies. These comments were not addressed. Although there were several errors in the document resulting from changing word processing programs no comments were received that would require modification of the Amendment (EA) and re-printing.

The comment section is broken up by resource so that a viewer interested in a specific subject can view all the comments and responses to that resource. The Resources are organized as follows: Wild Horses, Range Management, Vegetation, Planning, Wildlife, Wilderness, Socio-Economics, Visual, and Minerals.

**Table A-1: List of Commentors**

| NAME/AFFILIATION | NUMBER OF COMMENTS | COMMENT NUMBERS |
|---|---|---|
| Robert S. Schmidt/Self | 3 | 4,45,69 |
| Barbara H. Warner/Self | 5 | 1,3,4,10,46 |
| Patricia R. Lane/The Humane Society of the United States | 4 | 1,2,5,47 |
| Reed F. Morris/Colorado Environmental Coalition-The Wilderness Society-Colorado Mountain Club | 15 | 5,45,48,49,50,51,52,53,54,65,72, 73,74,75,76 |
| Andrea Lococo/Animal Welfare Institute | 7 | 1,6,11,12,25,26,45 |
| Patience O'Dowd/Wild Horse Observers Association | 5 | 1,13,14,27,55 |
| Pati Temple/Self | 5 | 28,56,70,71,77 |
| Jon Hill/Cripple Cowboy Cow Outfit | 1 | 29 |

| NAME/AFFILIATION | NUMBER OF COMMENTS | COMMENT NUMBERS |
|---|---|---|
| Don Ament/Colorado Department of Agriculture | 2 | 30,50, |
| Ginger Kathrens/The Cloud Foundation | 3 | 1,8,45 |
| Larry and Jane Yazzle/Self | 3 | 2,45,57 |
| Barbara M. Flores/ American Mustang and Burro Association | 7 | 1,3,7,8,9,15,45 |
| Toni H. Moore/Colorado Wild Horse and Burro Coalition | 18 | 1,2,7,16,17,27,31,45,58,60,61,62,63, 64,66,67,78,79 |
| Leah and Robert Plant/Self | 3 | 2,18,58 |
| Gail Fox/Self | 2 | 1,80 |
| C.E. Brooks & Associates, P.C./Twin Buttes Ranch | 22 | 19,20,21,22,23,24,32,33,34,35, 36,37,3839,40,41,42,43,44,45,59,68, |
| Craig C. Downer | 1 | 2 |

## WILD HORSES

**1. Comment**: **Alternative B only allows retention of 29-60 wild horses. This is not a genetically viable population.**

**Response:** It is BLM policy to manage for self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat and to limit distribution to their herd area.

Considering genetic diversity issues, BLM recognizes that a population of 29 to 60 animals is less than the number needed to maintain a naturally self sustaining population, but this number of animals is compatible with other existing multiple uses and the capacity of the habitat.

BLM proposes to conduct scheduled introductions of 2-4 year old mares from other herds to create and maintain a more desirable level of genetic diversity. BLM has successfully managed viable populations in other small herds by utilizing periodic introductions.

**2. Comment: Claims that the Act did not envision the other uses of the public lands do not negate the mandate of the Act. The wild horses should and must take precedence over the other uses. The Act states that wild horses are to be managed principally, but not necessarily exclusively on their range and are to be considered comparably with other resource values in the land use planning process. I am upset about your proposal to eliminate this herd in order to favor oil and gas drilling and other extractive interests. This flies in the face of the Wild Horse Act which states that this national heritage species shall be managed "principally" in its legal herd areas. Clearly you are not following the dictates of multiple use.**

**Response:** PL-92-195; The Wild and Free Roaming Horse and Burro Act makes a distinction of Wild Horse Ranges; areas that BLM, through planning and consultation, may designate and maintain as "sanctuaries for [wild horse] protection and preservation." Wild horses on Wild Horse Ranges are managed principally, but not necessarily exclusively, on their ranges. The BLM manages two (2) Wild Horse Ranges: the Little Book Cliffs Range (Colorado) and the Pryor Mountain Range (Montana). Public lands where wild horses receive equal consideration with the other multiple uses are designated Herd Management Areas. The 2005 West Douglas RMP Amendment did not propose designating the West Douglas Herd area as a Wild Horse Range. The document proposes, in alternative B, to manage the Herd Area as a Herd Management Area.

In Herd Management Areas wild horses are managed comparably with other resources in a manner designed to restore thriving, natural ecological balance to the range.

**3. Comment: The document states that initial aerial census recorded nine horses in the area now recognized as the West Douglas Herd Area. BLM is aware that, at public meetings conducted soon after this census, members of the public drew staff's attention to numerous areas where wild horses were missed during the flyover. An independent count must be made as the current one of 60-151 with a difference of 91 cannot be accurate.**

**Response:** Page 12 of the 2005 amendment discusses this issue. "Population Census: The earliest aerial survey (helicopter) was completed in February 1974. The February inventory recorded 9 horses located in the Big Bull Draw area. The local public later identified two other areas in the Herd Area that supported wild horses: Texas Mountain (7 horses) and Cottonwood Draw (5 horses). Since 1974 herd numbers have increased as high as 151 head (in 1996). The most recent census, completed in February, 2005 documented 97 horses: 72 adults and 25 yearlings. The census map is shown in Appendix B-1. The population history for the West Douglas area is found on page 13.

**4. Comment: Expand the discussion of wild horse diet to acknowledge that wild horses are adaptable in their diets. Wild horses do not impact deer and other wildlife as they feed on grasses and not on herbaceous plants.**

**Response:** Wild horses are adaptable animals and will graze what they need in order to remain healthy. While studies concur that grasses and sedges compose the majority of wild horse diet, wild horses will feed on what is available to remain healthy when grasses and sedges are less available. Forage competition between livestock, wild horses and wildlife is most critical during the winter and early spring when animals must consume nourishment adequate to maintain body fat and, in the case of females, to meet dietary needs resulting from the latter stages of gestation. During periods when high snowfall makes grass plants hard to reach and the grasses contain lesser nutrient content, wild horses consume browse plant species side-by-side with livestock and wildlife. (See pages 13,14,47 in 2005 Amendment/EA)

**5. Comment: The establishment of the number of horses "permitted" to remain on their lands is arbitrarily and capriciously set, and is not based on sound scientific rationale or reason.**

**Response:** The 2004 amendment brought out that all of the alternatives with horse numbers greater than 60 had a high likelihood of the wild horses not remaining within the Herd Area, and of using private lands within and outside of the herd area. Several alternatives analyzed constructing fences which would be expensive to build and maintain, one fence would impact the Oil Springs Mountain Wilderness Study Area and none of the fences were expected to completely confine the horses. The Wild and Free Roaming Horse and Burro Act requires that wild horses are to be limited to habitat used at the passage of the act. The best opportunity for maintaining a herd of horses was to limit the number of wild horses to those which, given our best information, would remain within the herd area. (See pages 56, 57,59 in 2004 Amendment/EA)

**6. Comment: The current EA intimates that the application of fertility control would further jeopardize the genetic viability of this herd. Fertility control should have been included in the EA's analysis.**

**Response:** The relatively small number of horses identified in alternative B, coupled with genetic analysis determining this herd currently exhibits low genetic variation, resulted in our decision to not implement fertility control in the herd at this time. Frequent introductions of younger age class mares into the herd have been determined by geneticists the most expedient and efficient manner to increase herd genetics. Contraception in a herd of this size, with existing narrow

genetics, would not make a discernable difference towards increasing or strengthening existing herd genetics.

**7. Comment: What happened to the three grey horses captured and removed during the 1996 gather?**

**Response:**
Thank you for noting the erroneous statement that grey horses were captured from West Douglas in 1996. More than one herd was captured in 1996 and the grey horses were captured from another location.

**8. Comment: Why is the herd shrinking – from 300,000 acres as reported in BLM's last Report to Congress in 1995 to under 130,000 acres in this EA? There seems to be some confusion within BLM regarding the acreage of the West Douglas HA. On page 9 of this EA, table 2-1 indicates there are 123,387 acres in the entire area. The 1975 URA Step 3 had the Douglas Creek wild horse unit with a total of 187,970 acres. The 1996 BLM Herd Area Statistics indicates there are 274,019 BLM acres while the 1996 draft White River Resource Management Plan has the WDHA acreage at 190,870 acres. AMBA is very interested in learning why there is such a large discrepancy in the number of acres.**

**Response:** The acreage figure included in the 10th and 11th Reports to Congress for the West Douglas Herd Area is incorrect. The acreage figure recorded in the 1975 URA step 3 is identified as the Douglas Creek Herd Unit; the boundaries of which differ from what later became a portion of the West Douglas Herd Area. The Douglas Creek Herd Unit included all of what is now the West Douglas Herd Area, and a portion of what is now the Piceance-East Douglas Herd Management Area. Acreages identified in both the 1996 BLM Herd Area Statistic for West Douglas and the 1996 draft White River Resource Management Plan are incorrect. The West Douglas Herd Area contains a total 123,387 acres. The physical boundaries of the West Douglas Herd Area have not changed regardless of acreage discrepancies resulting from human error.

**9. Comment: AMBA does not accept the theory that wild horses use 1.25 AUMs per animal as prevailing science conducted in this area does not support this premise.**

**Response:** The 1.25 AUM conversion factor for wild horses is recognized in the 1982 National Research Council's Phase 1; Final Report of Wild Free-Roaming Horse and Burros: Current Knowledge and Recommended Research.

**10. Comment: Wild horses do not adversely impact waterways, watersheds or riparian areas. Horses keep frozen waterways open and do not linger in [riparian] areas.**

**Response:** Page 26 of the document, 3.6; Riparian Systems discusses riparian systems in the Herd Area and makes no reference to overuse by wild horses.

**11. Comment: The EA must provide a detailed economic analysis of administering fertility control and associated management techniques for the West Douglas herd.**

**Response:** The West Douglas RMP Amendment analyzes the feasibility of managing a population of wild horses in all, or in any portion therein, of the West Douglas Herd Area. Immunocontraception would be fully analyzed through a Gather Plan/Environmental Assessment or Herd Area Management Plan.

**12. Comment: The EA does not mitigate impacts that adversely affect wild horses. The EA must analyze alternatives that examine changes in horse distribution, and whether this concern is itself warranted.**

**Response:** Because the earliest planning document identified closure of the West Douglas Herd Area, and future planning documents brought this recommendation forward, wild horses in the West Douglas Herd Area have been managed only by periodic captures aimed to reduce herd size. Pro-active management addressing interaction with wild horses and other resources, and possible conflicts between wild horse management and the management of other resources has not, to date, been applied to this herd. Rather, impacts to the herd by other resources and the adaptation of the herd to these potential conflicts have only been casually observed and recorded.

The EA identifies on page 49 that, with selection of alternative B, herd health will be monitored to determine interaction and possible conflicts between the wild horse herd and other range resources. The EA identifies mitigation measures for implementation if deemed necessary to encourage and maintain a thriving, natural ecologic balance between range users and to encourage health and productivity of the herd.

**13. Comment: The far west and north herd areas are likely all part of the same herd originally but due to human interference have been artificially isolated from one another. It is not right now to penalize the horses by wiping them out or reducing them or isolating them to genetic inviability [sic].**

**Response:** We do not understand your terms "far west herd" and "north herd". We could conjecture your meaning but agree that conjecture is not appropriate in a response to RMP comments.

**14. Comment: With 0 or 750 AUMs for wild horses vs 8,330 or 9,080 for livestock it appears that the following requirement of the 1971 Act is not being complied with at any level. Per the Act "The secretary shall manage wild, free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving, natural ecological balance on the public lands.**

**Response:** The Act states that BLM will manage wild horses in a manner that encourages, or maintains a thriving, natural ecological balance between the uses and the users on public lands. The Act does not recognize a specific number of wild horses be managed.

**15. Comment: Seasonal census should be conducted at least once in the spring, summer, fall and winter for at least one year to get a realistic look at wild horse use and migration patterns. If BLM were to spend some time studying wild horse behavior they might understand wild horses are more like wildlife than livestock.**

**Response:** We have provided adequate data within the Amendment, showing changes in horse movement over time. Seasonal distribution is shown in the preferred habitat maps B-1.

**16. Comment: The data Dr. Cothran received in 2001 for genetic analysis was not complete, nor presented in good faith. If BLM were concerned about genetic viability samples would have been submitted prior to BLM's intense efforts to remove horses.**

**Response:** BLM submitted blood samples from the West Douglas herd for genetic analysis in 2001. This action was taken when management began to consider re-evaluating its Land Use Plan decision to close the West Douglas herd from management. BLM worked with Dr. Cothran supplying the data needed for genetic anlysis of the West Douglas herd, maintaining open communication with Dr. Cothran during his analysis of the blood samples, and following the analysis. Dr. Cothran has been, and remains, an advisor to issues related to genetic viability of the West Douglas herd.

**17. Comment: In fact, we find throughout this document the impacts of wild horses on other intrinsic values or vested interests, yet there is no meaningful analysis to determine**

**impacts on wild horses. While the White River BLM Field Office moves to confine wild horses to less than 1% of original habitat of 1971.**

**Response:** Impacts to horses from other resources are contained on page 48 and 49 (cumulative Impacts) of the 2005 Amendment. The White River Resource Area manages wild horses within the Piceance/East Douglas Herd Management Area which contains the habitat on which 97% of the wild horses existed at the passage of the act. Refer to Page 3, Map1-3, 2005 Amendment.

**18. Comment: These herds have been shrinking and our concern is that this is deliberate. It is frightening because political interests and pressures are superseding the rights of citizens of this state who enjoy having these incredible animals exist in our midst. We as citizens are not willing to accept arbitrary and capricious actions on the part of the BLM that continually shrink habitat and herd sizes. What is the rationale? Whose interests does the BLM serve? Whose interests should the BLM be serving? To whom is the BLM accountable?**

**Response:** The proposed alternative does not shrink the habitat of the West Douglas herd. The proposed alternative recognizes that wild horses will be managed in the entire Herd Area and identifies possible range improvement projects aimed to widen distribution of horses in their Herd Area.

**19. Comment: To balance the irreparable harm to wilderness values caused by increased wild horse impacts in the WSA BLM likely would be forced to build a fence. (page 12; para1)**

**Response:** BLM does not propose to build a fence through the WSA. Managing the herd at the proposed level of 20 to 60 horses will resolve the issue of horses drifting outside the HMA. Any horses that do relocate outside HMA boundaries would be captured and removed, or relocated during scheduled gather operations.

**20. Comment: BLM does not address the fact that water developments and drift fences are unlikely to solve distribution problems. The mitigation measures in this document are based on erroneous assumption that wild horse distribution can be manipulated by water developments, drift fences and vegetative treatments; and adjustments in livestock grazing strategies will mitigate resource degradation on wild horse habitats. (page 12; para 3)**

**Response:** BLM believes the conscientious placement of range improvement projects could be a valuable tool to manage horse band distribution in the Herd Area. The use of range improvements to affect wild and domestic animal concentration and distribution is widely used by the BLM, and by other agencies.

**21. Comment: BLM provides no data indicating established home ranges and habitat selection patterns of wild horses can be shifted by developing additional water sources. The preferred habitat for wild horses provides ample water sources and these sources are close to security cover and forage resources. It is unlikely that water developments on the north end of the proposed HMA would result in a long-term shift in habitat selection patterns of the herd. (page 12; para 4)**

**Response:** If home range conditions become impacted by human development to the point that wild horse bands are crowded beyond their level of comfort; bands will begin to relocate to new locations. Water development, and other range improvements, would be constructed to encourage horses remain in newly established locations within the Herd Management Area. The use of range improvements to affect wild and domestic animal concentration and distribution is widely used by the BLM, and by other agencies.

**22. Comment: As long as there is forage, water and cover in the established home ranges these horses will continue to demonstrate affinity for these sites. While wild horses may move north during severe winter conditions, when water is available, this temporary shift would do little to address the concerns with impacts to native forage, soil and water resources during the growing season. (page 13; para 1)**

**Response:** Range monitoring analysis indicates the proposed herd management area can sustain a population of wild horses managed in a range of between 29 and 60 horses. This four year management range equates to an average population of 42 horses. The West Douglas horse population has not been as low as a mean of 42 horses since 1985 when the population was estimated at 45 head.

**23. Comment: BLM does not address the frequent problem of wild horses knocking down or jumping over fences, or that they are very territorial. If the long-term objective is to promote interactions between different social groups of wild horses during the breeding season the drift fences would frustrate this objective by impeding significant home range overlap among horse bands. (page 13; para 2)**

**Response:** Managing the herd at the level proposed in alternative B is expected to highly decrease the incident of wild horses leaving the herd management area. Drift fences, and any other range improvement projects, would be closely analyzed prior to construction to assure management objectives are obtained.

**24. Comment: BLM fails to address the significant likelihood that funding will not be available to implement projected range improvements, or that it would be exceedingly costly and difficult to successfully gather the West Douglas herd to maintain the proposed AML levels.**

**Response:** Placing the Herd Area in Herd Management Area status identifies BLM intends to manage the herd and allows BLM to place the HMA on the 4 year gather schedule, along with other HMAs managed by BLM. WRFO is not alone in managing a small herd of horses (under 50 horses) nor would WRFO be the sole field office managing a herd located in rugged, isolated terrain. The 1971 Wild and Free-Roaming Horse and Burro Act does not recognize BLM will manage wild horses only when the action is convenient and cost-efficient.

**25. Comment: One year ago, the BLM contended that even with a total removal of wild horses, forage allocation in the WDHA needed to be reduced by 20% to reflect current conditions, thus requiring a reduction in livestock Animal Unit Months (AUMs). Between then and now, and without explanation, the current EA omits any discussion of such a need. More significantly, it fails to analyze an alternative that adjusts livestock forage allocation, even though forage allocation is a pivotal issue in determining an initial wild horse Appropriate Management Level (AML) for the WDHA. Noticeably absent is an analysis of any alternative implementing 43 CFR 4710.5(a)(c) (Closure to livestock grazing. This regulation provides: "(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses from disease, harassment or injury, the authorized officer may close appropriate areas of public lands to grazing use by all or a particular kind of livestock." And "(c) closure may be temporary or permanent. After appropriate consultation, a notice of Closure shall be issued to affected and interested parties."**

**Response:** The carrying capacity determination was not used because determination of the AML and livestock carrying is an activity level decision and does not require a decision within a Land Use Plan Amendment. Modifications in use will be in compliance with current regulation and

guidance. Use of 43 CFR 4710.5(a)(c) is a tool to accomplish management, not an alternative. There is the opportunity to use these tools depending on the alternative selected.

**26. Comment: The EA does not discuss how livestock are confined in grazing pastures. Are there internal fences? If not, what prevents egress and ingress of livestock during the grazing season?**

**Response:** The herd area contains few pasture fences. Livestock are controlled by herding in compliance with an Allotment Management Plan which designates locations, periods of use and objectives for maintaining rangeland health.

**27. Comment: The Historical and current numbers and locations of cattle through time should be included in this document.**

**Response:** The locations of livestock can be derived from the grazing plan on page 17 and 18. Grazing use (AUMs) varies by year based of forage production, but the permittee has a grazing permit that limits the allowable maximum use for the allotment. Below is a 20 year summary of average use within the herd area by Twin Buttes Ranch Co..

*Review of Twin Buttes Actual use shows a low of 4,472 AUMs (2003-2004 Grazing Season) and high of 8407 AUMs (1981-1982 GS) and an average use of 6,635 AUMs for the period 1983 to 2004. Listed below is a comparison of the Current Permitted Use, Average Use and the Proposed Allocation.*

| | *Cottonwood* | *Lower Horse* | *Water Canyon* | *Texas Creek + Portion of West Creek* | *Park + Water* | *Total* |
|---|---|---|---|---|---|---|
| *Current Allocation* | *1340* | *680* | *3360* | *3417* | *96* | *8893* |
| *Average use* | *885* | *610* | *2660* | *2420* | *60* | *6635* |

**28. Comment: Allowing 750 AUMs is hardly adequate. The cattle AUMs are too excessive and should be reduced in favor of range improvement and wildlife.**

**Response:** The allocation for horses is derived from a four year gather cycle, on which the third year there will be 50 horses using the range for 12 months and a 1.25 factor for horse use which equals 750 AUMs. The third year was chosen as the allocation year as the first two years the horses will be under the allocation to allow range recovery and the third year will be equal to the number of horses and the fourth year the horse use will exceed the allocation by approximately 150 AUMs. Monitoring studies will verify the carrying capacities of the rangelands and be divided between the users.

**29. Comment: On the Twin Buttes Allotment you would be able to make 750 new AUM's in one days work, and you should have to do that before you build the fence so the horses might stay home.**

**Response:** In this land use plan amendment 750 AUMs of forage are being allocated to horses from the AUMs allocated within the West Douglas Herd Area. Creating 750 AUMs is estimated to require 6,000 acres (38%) of the approximately 16,000 acres of pinyon/juniper woodland within the current range preferred by horses. The minimum total project cost is projected at $420,000.00. No analysis determining the environmental impacts has been conducted, although these impacts are expected to be wide ranging. Even after these treatments are completed it will take years of monitoring to determine if the additional forage is available on a sustained basis, and then the allocation would have to be changed through a Land Use Plan Amendment. The point being, creating an additional 750 AUMs would not be quick, or inexpensive and may not be

possible. We would have to weigh the economic and environmental costs between fence construction and land treatments.

**30. Comment: The report states that in the event horses cause public health standards to decline or if the horses leave the management area, BLM would construct fences, develop water supplies or conduct vegetation treatments (i.e. controlled burns). These are precisely the responsibilities that BLM agreed to conduct on the allotment to supplement increased herding responsibilities taken on by Twin Buttes to help the allotment meet standards. This statement would indicate that the improvements have not yet been conducted and that BLM does not intend to conduct the improvements unless the horses cause a problem.**

**Response:** Key to the success of the Twin Buttes Grazing Allotment Management Plan was the development of access and forage in the Texas Mountain Area. To date the stock trail from Angelo Basin to Texas Mountain has been completed along with ten stock ponds. BLM constructed an additional six ponds on the East Side of Texas Mountain. The Texas Mountain prescribed burn of 1,500 acres has also been completed as has a thinning of trees along the stock trail. BLM believes significant progress has been made in development of range improvements to implement the Twin Buttes Grazing Allotment Management Plan.

**31. Comment: In this document, BLM states the forage allocation for wild horses will be derived from the livestock permitted use. We understand that permits to graze livestock on public lands is a privilege, not a right, as defined by the Supreme Court. In the 2004 EA, BLM states there is currently 9,080 AUM's of forage allocation available to livestock, page 13. This same document states, "The carrying capacity of the Herd Area would be 9,080 AUMs." The current EA at page 50 states the exact same language. It would be a likely conclusion based on these two documents that BLM has over allocated grazing privileges based on available vegetation, especially in a stated time of drought. BLM in the narratives for these documents did not consider elk, deer, or wild horse vegetation requirements. Vegetative analysis states there were "approximately 1,700 acres of rangeland within the herd area that do not meet the Standard for Public Land Health for vegetation, which is directly attributable to wild horse utilization" page 62, without benefit of defining the areas. Yet, BLM fails to note in the Cottonwood Pasture Analysis, that wild horse have not utilized that area in the northern portion of the Herd Area since almost all of the horses were removed in the 1989 roundup. BLM also fails to note the same area was not in a decline at the time the wild horses were removed. A roundup in 1996 removed wild horses from the entire herd area (with several from the Cottonwood Pasture), yet the removal plan noted wild horses were causing an impact only in small portion of the southern part of the herd area.**

**Response:** Your comment contains many inconsistencies and unrelated topics and as such is difficult to respond to. You commented that the permitted use has over allocated grazing privileges, we agree and said so specifically on page 28 of the 2004 Amendment.

*Listed in Table 3-12 is a summary of the acres, proposed carrying capacity and the current livestock forage allocation for each of the pastures of the Twin Buttes allotment and the Bull Draw Allotment within the Herd Area. The "Current Acres/AUM" column shows that there is a great difference among pastures. Specifically, current allocation within Water Canyon Pasture results in seven acres per AUM. BLM discovered that this is an over-allocation due to a lack of re-analysis when the allotment was converted from sheep to cattle. Reassessment and revision of the carrying capacity for this pasture accounts for the greatest portion (2,101 AUMs) of the difference (2,133 AUMs) between the established forage allocation and the proposed allocation for the herd area. Accurate determination of forage allocation is necessary because is used to schedule livestock numbers and periods of use, as well as estimating the forage needs for each wild horse alternative.*

***Table 3-12: Available Forage within the Herd Area***

| *Pasture/Allotment* | *Acres* | *Proposed Forage Allocation AUMs* | *Proposed Acres/AUM* | *Current Livestock Forage Allocation AUMs* | *Current Acres/AUM* |
|---|---|---|---|---|---|
| *Cottonwood* | *14,344* | *685* | *21* | *1,340* | *13* |
| *Upper Horse* | *10,002* | *560* | *18* | *680* | *15* |
| *Water Canyon* | *23,122* | ***1,259*** | ***18*** | ***3,360*** | ***7*** |
| *Texas Creek* | *58,243* | ***3,568*** | ***16*** | ***2,838*** | ***21*** |
| *Water Hole* | *43* | *3* | *14* | *0* | *0* |
| *Park* | *882* | *49* | *18* | *96* | *9* |
| *West Creek* | *7,227* | *408* | *18* | *579* | *12* |
| *Bull Draw Allotment (Within HA)* | *9,526* | ***415*** | ***23*** | ***187*** | ***51*** |
| ***Totals inside Herd Area*** | ***123,389*** | ***6947*** | ***19*** | ***9,080*** | ***14*** |

BLM acknowledged in the Twin Buttes Allotment Management Plan, the 1998, 2000 and 2002 West Douglas Gather Plans, and the 2004 West Douglas Amendment that livestock grazing was a factor in 1099 acres to not meet the vegetation standards. The majority of horses had been removed prior to 1986, with no horses occupying or being captured in the Cottonwood pasture in 1996. The 1996 gather plan was accurate in describing the conditions in the southern part of the Herd Area.

BLM does consider elk, deer, wild horses and livestock vegetation requirements by continuing the vegetation decisions of the White River ROD (page 50, 2005 Amendment) which has specific vegetation requirements and also incorporates Colorado Standards for Rangeland Health and management guidelines. Additionally vegetation mitigation measures were included; "Vegetation monitoring studies and evaluation of those studies would be used to determine acres meeting the standards for rangeland health. These studies would be used for; documenting carrying capacity, determining the need for range improvements and land treatments, modify livestock periods of use by pasture, adjustments in livestock numbers and the wild horse AML." Additionally the White River Resource Management Plan of 1997 continued the forage allocation of the 1981 White River Grazing Management Final Environmental Impact Statement which considered wildlife use. Based on the allocations within the 1997 and 1981 documents the only allocation decision needing to be modified is for retention of wild horses.

Concerning your comment that "BLM also fails to note the same area was not in a decline at the time the wild horses were removed." The chart 3-11on page 22, 2005 Amendment identifies oil and gas, and livestock as the causative factor Cottonwood pasture. You are correct we did not discuss vegetation trend relating to the removal of wild horses, or increased horse numbers, on any of the pastures. BLM is required to identify how those acres not meeting the standards will be managed. This became a part of the grazing management plan completed in 1999.

In 1996 no horses inhabited the Cottonwood pasture and no horses were removed. The 1996 gather plan described a lack of TNEB in the southern portion of the herd area associated with East and West Texas creek pastures.

**32. Comment: Alternative B allocates to wild horses 750 AUMs of Twin Buttes' permitted use to sustain the AML. 2005 EA at 49. The re-allocation of 750 AUMs of cattle forage to wild horses is not supported by BLM data or the observations presented in the EA.**

**Response:** The allocation for horses is derived from a four year gather cycle, on which the third year there will be 50 horses using the range for 12 months and a 1.25 factor for horse use which equals 750 AUMs. The third year was chosen as the allocation year as the first two years the horses will be under the allocation to allow range recovery and the third year will be equal to the number of horses and the fourth year the horse use will exceed the allocation by approximately 150 AUMs.

**33. Comment: Permanently reducing Twin Buttes' permitted use will have little influence on environmental conditions on habitats used by wild horses. Indeed, the wild horses have already "re-allocated the forage resources to themselves by making their preferred foraging habitats unsuitable for livestock grazing. Twin Buttes has already significantly decreased its grazing use of Texas Mountain area to account for wild horse use. 2004 EA at F-6, L-20**.

**Response:** Since horse use has never been allocated for, this use has been above and beyond that allocated to livestock. BLM responded to a similar comment about decreasing use of Texas Mountain in the 2004 amendment comment #40 below.

***40. Comment: The 1983 AMP requires 2400 AUMs of forage for wild horses until their removal. A review of the Twin Buttes Ranch actual Use will verify that we reduced our permitted use to comply with the requirement.***

***Response:*** *Review of Twin Buttes Actual use shows a low of 4,472 AUMs (2003-2004 Grazing Season) and high of 8407 AUMs (1981-1982 GS) and an average use of 6,635 AUMs for the period 1983 to 2004. Listed below is a comparison of the Current Permitted Use, Average Use and the Proposed Allocation.*

| | *Cottonwood* | *Lower Horse* | *Water Canyon* | *Texas Creek + Portion of West Creek* | *Park + Water* | *Total* |
|---|---|---|---|---|---|---|
| *Current Allocation* | *1340* | *680* | *3360* | *3417* | *96* | *8893* |
| *Average use* | *885* | *610* | *2660* | *2420* | *60* | *6635* |

*The Table above shows only Twin Buttes use and does not include Bull Draw.*

*Our information did **not** show a change in your use over the period of 1980 to present. Because of Twin Buttes inability to use the area around Texas Mountain, this use was shifted to Water Canyon Pasture.*

**34. Comment: Taking 750 AUMs of Twin Buttes' permitted use, therefore, amounts to double jeopardy for the livestock operation. First, Twin Buttes loses the Texas Mountain grazing opportunities which are "critical to the livestock operation, 2004 EA at 60, an then BLM arbitrarily reduces its forage allocation from "somewhere" the horses may never select as foraging habitat. The permanent reduction is manifestly unfair given that Twin Buttes has met its obligation but continues to bear the burden of BLM's repeated failure to remove wild horses from the West Douglas herd area.**

Response: The 750 AUMs allocated to horses would be taken from the total allocation within the Herd area. The forage allocation would be split between the three permittees based on the distribution of the horses. Additionally if BLM manages wild horses in the range of 29-60 the

current vegetation problems associated with more than twice as many horses should be significantly be reduced.

**35. Comment: A permanent reduction in permitted livestock grazing use may only be effected through an activity-level decision in coordination, consultation and cooperation with the permittee….This is precisely why the White River RMP requires that when "monitoring studies" support additional adjustment to grazing levels, "increases or decreases in forage will follow procedures outlined in 43 C.F.R. 4110" 1997 White River RMP, p.2-24 (emphasis added). *See also id.* ("allocation levels" to be "developed in integrated activity plans or allotment management plans"). The proposed reduction, therefore, does not conform to law or the land use plan.**

**Response:** Permanent reductions will be in accordance with regulation and the land use plan. Specifically under 43 CFR 4110.3 Changes in permitted use. The authorized officer shall periodically review the permitted use specified in a grazing permit or grazing lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with **land use plans** or activity plans, or to comply with the provisions of subpart 4180 (Fundamentals of Rangeland Health and Standards and guidelines for Grazing Administration). These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer. Under Sec. 4110.3-1 and Sec. 4110.3-3, Increasing and reductions in permitted use, both include the requirement for consultation, cooperation, coordination, with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public. Under 4110.3-3(a) Reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer.

**36. Comment: In addition, there is no evidence presented in the EA to suggest that wild horses and livestock in the West Douglas herd area use foraging habitats concomitantly, and consequently, reductions in livestock AUMs do not equate to additional forage resources for wild horses. A reduction in permitted use has to be supported by a rational basis. *Chris Claridge v. BLM*, 71 IBLA 46, 50-52 (1983)(where quality of the range and its carrying capacity would benefit from implementation of an allotment management plan, district manager's decision to cut current cattle use to achieve an improvement in trend of the condition of the range was error). Indeed, BLM has already acknowledged that decreases in grazing use "only temporarily relieve the continued long term negative impacts of excessive horse stocking rates and continuous year-long use" and that "in many instances, the consequent degradation of range sites would be irreversible and irretrievable." 1996 WRRA Wild Horse Removal EA at 52.**

**Response:** Wild horses and livestock do not have to forage concomitantly to require a forage allocation. A forage allocation for horses would allow for managing numbers of livestock and periods of use to improve the forage resource. Managing horses without a forage allocation would allow livestock and horse use to exceed the carrying capacity of the rangelands.

**37. Comment: Proposed changes in permitted use must also be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer. 43 C.F.R 4110.3, 4110.3-2(b); Filippini Ranching Co. and Paris Ranch v. BLM, 149 IBLA 54 n.2 (1999) (setting aside grazing decision based on failure of monitoring data to support need for change and inability to provide representative monitoring samples. There is absolutely no indication of the considerations in the EA to corroborate the proposed reduction. BLM, for example, states in conclusiory fashion that there are 2,179 AUMs available for cattle and wild horses in the Texas Mountain vicinity but provides no explanation as to how it calculated this figure.**

**Response:** The 2,179 AUM figure was derived from the Pasture Vegetative Analysis, Appendix F: of the 2004 Amendment and is meant to provide the reader with information about the capabilities of this area. Since the Texas Creek pasture included significant acreage outside of the Texas Mountain area, using the permitted use figure for the Texas Creek pasture of 3,607 AUMs would have misrepresented the available forage in the Texas Mountain area. We need to be clear in that BLM is allocating forage to wild horses under a land use plan amendment which is going to cause a reduction in livestock use. This reduction in livestock use is not due to present vegetation conditions.

**38. Comment: The analysis of forage allocation should have specifically evaluated available forage for wild horses, independent of existing allocations for livestock. If livestock forage allocation is the issue of interest, this should be addressed in the AMP. See 1983 AMP at p. 16 (vegetation objectives to be accomplished "by the removal of wild horses in which case AUMs allocated to wild horses would be reallocated to livestock and wildlife"). The proposed permanent reduction is contrary to BLM's obligation under the TGA to ensure that grazing privileges are "adequately safeguarded." 43 U.S.C. 305b. Finally, Twin Buttes must also be provided the opportunity to review and give input during the preparation of reports that evaluate monitoring and other data used as the basis for the proposed decision.**

**Response:** Monitoring studies will verify the carrying capacities of the rangelands and be divided between the users. Along with this is the need for suitability criteria for livestock to be applied along with specific objectives for improvements in rangelands, and use of the vegetation standards contained in the current Land Use Plan. We have been coordinating with Twin Buttes Ranch on specific rangeland concerns and the need for responsive management during drought conditions. This Land Use Plan Amendment will make decisions on the uses within the West Douglas Herd Area specific to wild horse management including an allocation of forage. Twin Butte allotment has been allocated forage in previous land use plans. Reductions in livestock use will be in accordance with CFR 4110.3-3 and include consultation, cooperation, and coordination; and be implemented through a documented agreement or by decision of the authorized officer.

## VEGETATION:

**39. Comment: The law governing wild horse management is unmistakably clear. Under the 1971 WHBA, wild horses must be managed to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation and to protect the range from the deterioration associated with overpopulation. 16 U.S.C. 1333(a).**

**Response:** Table 4.1: Findings on the Public land Health Standard for Plant Communities by Acreage (Pg. 51 2004 Amendment), summarized by pasture the expected impacts of the current situation with an average of 80 horses on the herd area, implementing the existing RMP decision for removal of horses and maintaining a herd of 29 to 60 wild horses. Under the current situation 6,404 acres have been determined to not be meeting the standard, with 2,350 acres continuing to not meet the standard while retaining horses, and 2,029 acres not meeting the standard with total removal of horses. Total removal of horses is expected to improve 321 acres vs. Alternative B. In the 2004 amendment the acres not meeting the standard was determined (Table 3-11, 2004) to be 5,454 acres and was reassessed during the winter of 2005 and determined to be 6404 acres (Table 4.1). In the Comments and Response section of the 2004 amendment we received the comment, (L-16 Comment 44) *"Moreover, Table 3-11 indicates only 5454 acres or 4.4% of the 123,389 acres within the herd area are not achieving rangeland health standards. In other words nearly 94% on the herd area is meeting standards. This suggests that if there is a grazing problem in the Herd Area, it is a result of grazing distribution rather than over-allocation".* Given this reasoning 321 acres of vegetation not meeting the standards would be directly attributable to wild horses if they are retained, which is .26% of the herd area. We believe it is reasonable to

have wild horses at this level of vegetation disturbance within the herd area and this level of disturbance is acceptable under a thriving natural ecological balance.

**40. Comment: The designation of Stony Foothills (7822 acres), Pinyon Juniper Woodlands (40,716 acres), and Pinyon/Juniper Chainings and Fires as "non-range" sites in not consistent with conventional practice in rangeland ecology and management. The current ecological status of these sites (i.e., late successional stages) may be associated with a limited herbaceous understory; however, each of these sites is an ecological site with "a distinctive kind of rangeland that differs from other kinds of rangeland in its ability to produce a characteristic natural plant community". The lack of current forage production or suitability for livestock grazing does not relegate these areas to be considered in the same class as rock outcrops and badlands.**

**Response:**
Stony Foothills in the Rio Blanco County survey is mapped under #91-Torriorthents-Rock Outcrop. This map unit is in extremely rough and eroded areas on mountains, hills, ridges and canyonsides. Slopes mainly face south. The potential plant community on this unit is mainly some pinyon and juniper trees with Indian ricegrass, beardless wheatgrass, praire junegrass, low rabbitbrush and some forbs. Many areas have sparse stands of pinyon and juniper trees, and other areas are nearly barren. The average annual production is about 100 pounds per acre. Livestock grazing is limited by sparce vegetation and steepness of slope. The Rio Blanco County survey for the Rentsac soil which makes up the majority of the pinyon-juniper classification in this document classifies the vegetation type as a "Pinyon –Juniper woodland site." Pinyon/Juniper Chainings and Fires are primarily within the Rentsac soil described above. We stand by the successional classifications described in the 2005 Amendment. The classification of seral stages of non-range sited does not describe the contribution to forage. The vegetation classification of the 2004 amendment did recognize the forage contribution of pinyon/juniper woodland and in particular the productivity of early seral pinyon/juniper communities.

**41. Comment: In the case of Stony Foothills, the current Ecological Site description for Colorado describes the potential plant community as being capable of producing 600 lbs/acre of total production during a median year. It is possible that late seral Stony Foothill sithe in the west Douglas HMA produce even less herbaceous production, however, the potential remains the same, and these sites should be considered in management planning.**

**Response:** Refer to the above response.

**42. Comment: Likewise, late seral Pinyon/Juniper woodlands are certainly considered "Range Sites" with well documented potential natural communities and associated soils. In many pinyon juniper sites in the west Douglas HMA there is indeed limited, or non-existant forage production. However, within the large proportion of the HMA that is currently occupied by pinyon juniper plant communities, there are thousands of acres which the potential natural community includes a significant herbaceous component. Our observations indicate that these sites provide the majority of foraging opportunities for cattle during February, March and April.**

**Response:** We will continue to consider Pinyon/ Juniper as a woodland site backed up by the Soil *Survey of Rio Blanco County Area Colorado*.

**43. Comment: Classification and description of rangeland ecological sites and forest habitat types was never intended to be a substitute for on-the-ground management decisions based on sound ecological principles. It is imperative that the future management decisions regarding forage allocation quantify the contributions (or not) of pinyon juniper and stony foothills sites. To suggest that these habitats contribute**

**absolutely no foraging opportunities for wildlife, livestock, or wild horses is questionable based on observations of feeding site selection by cattle during the early spring season.**

**Response:** In the 2005 Amendment, forage was allowed for in the Pinyon/Juniper woodland type.

**44. Comment: It is unlikely that all late seral Pinyon/Juniper plant communities (and other "non-Range" sites) would meet the Colorado Standards for Public Land Health. We request that you provide a summary of the assessment for each standard.**

**Response:** No failings of the indicators below have been identified in the late seral communities of Pinyon/Juniper, stony foothills, and Douglas-fir-Spruce/Fir forests.
The vegetation section addressed the plant communities as to meeting the public land health standards for vegetation (2005 Amendment.Table 2-6, Page 21). The definition for Standard 3 is; Healthy, productive plant and animal communities of native and other desirable species are maintained at viable population levels commensurate with the species and habitat's potential. Plants and animals at the community and population level are productive, resilient, diverse, vigorous, and able to reproduce and sustain natural fluctuations and ecological processes.
The indicators for this standard are:

- Noxious weeds and undesirable species are minimal in the overall plant community.
- Native plant and animal communities are spatially distributed across the landscape with a density, composition, and frequency of species suitable to ensure reproductive capability and sustainability.
- Landscapes exhibit connectivity of habitat or presence of corridors to prevent habitat fragmentation.
- Photosynthetic activity is evident throughout the growing season.
- Diversity and density of plant species are in balance with habitat/landscape potential and exhibit resilience to human activities.
- Appropriate plant litter accumulates and is evenly distributed across the landscape.
- Landscapes composed of several plant communities that may be in a variety of successional stages and patterns.

Pinyon/Juniper, stony foothills, and Douglas-fir-Spruce/Fir forests meet these indicators.

## Planning

**45. Comment: The most common planning questions were why the 2004 amendment was withdrawn and why there are only two alternatives in the 2005 Amendment. Additionally we received comments requesting BLM to examine an alternative for managing a herd of 100 to 200 wild horses. Some commenters felt BLM should review all eight alternatives again. All of these comments relate to the development of the alternatives in the 2005 Amendment.**

**Response:** The 2005 Amendment is based on the comments and analysis resulting from the 2004 Amendment. Comments indicated the 2004 Amendment was difficult to understand with eight alternatives analyzed. The public identified that the 2004 amendment did not analyze an alternative for management of horses without oil and gas stipulations. The 2004 amendment brought out that all of the alternatives with horse numbers greater than 60 had a high likelihood of the wild horses not remaining within the Herd Area, and of using private lands within and outside of the herd area. Several alternatives required fences which were expensive to build and maintain, some would impact the Oil Springs Mountain Wilderness Study Area and none of the fences were expected to completely confine the horses. The Wild and Free Roaming Horse and Burro Act requires that wild horses are to be limited to habitat used at the passage of the act. The best opportunity for maintaining a herd of horses was to limit the number of wild horses to those which, given our best information would remain within the herd area. The premise of the

2005 amendment was to build on the alternatives and analysis conducted in the 2004 Amendment.

**46. Comment: Also where is the no action alternative? Doesn't NEPA require one?**

**Response:** The BLM Land Use Planning Handbook H-1601-1 states, "The BLM must consider all reasonable alternatives, including the no action alternative (the continuation of present levels or systems of resource use)". In this document the no action alternative is Alternative A (Implement Existing RMP Direction).

**47. Comment: Moreover , it is clear that regardless of the option chosen, the removal or significant reduction in the number of these horses is a significant effect and worthy of a separate Environmental Impact Statement (EIS).**

**Response:** NEPA process requires that an Environmental Assessment be prepared to determine impacts. If the decision of this assessment concludes there is "significant impacts" then an EIS would be prepared. To date two EISs have been prepared concerning this issue. (WRRA Grazing EIS of 1981 and WRRA RMP/EIS of 1997)

**48. Comment: BLM has suggested that consideration of NSO stipulations on new oil and gas leases in an alternative would be unreasonable. NEPA requires that an EA discuss reasonable alternatives to the proposed action. Whether an alternative is "reasonable" or not turns on whether it will accomplish the stated purpose for the project.**

**Response:** The 2004 amendment discussed a full range of options for managing horses within the West Douglas Herd Area. This document found that application of NSO's to the unleased parcels which totaled 7% of the herd area would not provide adequate protection to wild horse habitat. This finding was brought forward into the 2005 document, which does not discuss stipulations on human development. The placement of stipulations was reasonable; their functionality in protection of wild horse habitat was not.

**49. Comment: As the current RMP/EIS became final with the recommendation that the horses be removed from the West Douglas Area, it does not follow that the RMP was prepared then, to comprehensively address how, upon retention of the horses (now the preferred alternative), the land will be managed. Therefore, the BLM should not limit itself in scope to only management decisions that are directly related to wild horse management. The EA states that "protecting resource values, providing multiple uses, and improving the health of the land" are other functions of this EA besides management of wild horses per se. If that was the intended purpose of this EA, a comprehensive look at how to manage multiple-uses and protect resources, including wilderness should have taken place. The BLM admits that the current RMP is lacking in its analysis of the resource values within the West Douglas Herd Area. The BLM has stated,**

**This process will allow the BLM, <u>with integrated public involvement</u>, to develop and conduct a detailed analysis of a full range of alternatives specifically focused on wild horses and other resources within the West Douglas Herd Area<u>. BLM has determined that such detail and focus may not have been sufficiently addressed and documented in the current RMP, which has a resource area-wide scope</u>. (emphasis added) 2004 WDHA EA at 2.**

**Response:** The current introduction reads, "The purpose of the West Douglas Herd Area Land Use Plan Amendment is to identify whether it is feasible at this time to manage wild horses in the West Douglas Herd Area of the White River Resource Area, **while** protecting resource values, providing for multiple uses, and improving the health of public lands. The Bureau of Land Management (BLM) initiated this planning process to determine whether it should amend

decisions in its Resource Management Plan (RMP) concerning management of wild horses in the West Douglas Herd Area.

**50. Comment: BLM must describe impacts to the full range of resource values, and preparation of a plan amendment provides the ideal process for BLM to assess and protect the wilderness character of the proposed Oil Spring Mountain Wilderness. We question whether creating a Wild Horse Herd Management Area through a resource management plan amendment is proper administrative process.**

**Response:** BLM has described the full range of resource values within the 2004 and 2005 Amendments for management of wild horses within the West Douglas Herd area. Managing wild horses was the issue identified for this planning process which was carried forward with full public involvement. A wild horse amendment does not provide a reasonable process for wilderness management as the public has not had the opportunity to participate in scoping wilderness issues. *In this case retention of wild horses does not conform to the existing Land Use Plan and an amendment is required.*

**51. Comment: We maintain that BLM should prepare an alternative that provides for no new leasing or NSO stipulations to new leases within the southern portion of the Herd Area that is within the preferred horse habitat or that land which citizens have proposed as protection as wilderness character.**

**Response:** The 2004 amendment found that placing stipulations on new leases would impact 7% of the entire herd area and 4% within the preferred horse habitat. Stipulations on new leases would not maintain enough of the key wild horse habitat to maintain a balance of seasonal ranges.

**52. Comment: While alternatives in the 2004 WDHA EA (Alts. C, E, F, and G) attempted to analyze the impacts of oil and gas development on the herd through timing and lease notice stipulations for critical horse habitats, this analysis appears to have taken place without a view of the broader impacts. The BLM appears to start from the assumption that these lands must be available for energy production, and under this proposed plan amendment, without any additional lease stipulations likely to have appreciable benefits to the resource BLM is seeking to preserve---wild horse habitat. In managing for wild horses and other resource values, BLM is well within its authority to restrict or prohibit leasing in this area—especially where the threats of development have already taken such a great toll on the majority of the herd area, so much so that the horses rarely, if ever, inhabit the middle or northern portions. Having not considered a no new leasing and comprehensive no surface occupancy alternative, at least in the southern preferred horse habitat area, the BLM ignored a fundamental premise on which all the presented alternatives in the 2004 are based—what is not the herds "preferred habitat" is largely related to field of development to the north which herd no longer penetrates. BLMs failure to analyze <u>any</u> new stipulations in this EA even though BLM recognizes the southern portion of the Herd Area as the preferred wild horse habitat and could place this quality habitat in the same jeopardy as the remainder of the herd area dominated by gas wells.**

**Response:** Your comment relates to the Planning Criteria found on page 6 of the 2005 Amendment. Specifically the Oil and Gas Foreseeable Development scenario found in the 1997 White River Proposed Resource Management Plan remains valid and will be used for analysis.

**53. Comment: Since the potential mitigation measures included in this proposal for wild horses deal with one of the "likely" causes of horse preference for the southern portion of the HMA—lack of perennial waters-and range improvements have not been analyzed in term of protection or increasing band distribution (especially into the heavily developed northern area), BLM cannot rely on general references to generic "range improvements" that are "considered to mitigate impacts." EA at 48. BLM must also describe the efficacy**

**of each mitigation measure. Since this revised EA does neither, BLM cannot rely on its finding of "no significant impact" to avoid an EIS.**

**Response:** Using generic range improvements as mitigation is reasonable given the diversity of resources and the impacts that are expected to develop within the area. This amendment does not authorize the construction of any range improvement; all range improvements would be specific to the need and would be analyzed in a site specific environmental assessment. None are needed at this time.

**54. Comment: Once BLM chooses to implement mitigation measures described as ameliorating expected impacts and providing the underpinning for a finding of no significant impact, BLM must provide assurances of their value. Here, BLM chose to rely upon mitigation measures to diminish acknowledged environmental impacts of oil and gas development on numerous important resources, including wild horses, not analyzed in the existing RMP/EIS or this EA. Having done so, BLM must describe the selected mitigation measures for each resource value to a degree of specificity that allows meaningful review and provides adequate information to demonstrate their efficacy. BLM's effort to avoid both violates the fundamental purposes of NEPA.**

**Response:** BLM's mitigation measures are proven management practices which allow for addressing issues and impacts described in the Amendment.

**55. Comment: With a ratio giving horses a mere 9% of the AUM's (forage) at best, and giving cattle 91% of the AUM's at least, therefore:**

**i. This does not meet the letter or the spirit of the act for a "natural ecological balance".**
**ii. This is out of balance with what the American people (private citizens versus for profit corporations) want as per all the public inputs that the U.S. legislature received on the 1971 Act.**
**iii. This appears out of balance with the greater harm cattle do to the environment not to say that the ranchers don't make certain improvements. For instance horses spread native seed, cattle kill them. This is shown in table 3-6 pg 22 of this F.A. However the percentage harm caused by horses vs. cattle where horses are listed as a causative factor is not determined or stated. Cattle are causative factors for environmental damage on 7 of 10 vegetative communities and horses are listed as causative factors in 3 of 10. Oil wells are listed as causative factors in 8 of 10.**
**iv. These numbers cannot be considered balanced environmentally.**
**v. These numbers cannot be considered balanced mathematically or in any other way.**

**Response:** The 2004 Amendment discussed eight alternatives ranging from zero horses to 630 horses. The impacts to resources from these alternatives and the varied AUM allocations are still valid. Alternative B in the 2005 Amendment discusses a wild horse population of 29-60 wild horses as this number is expected to stay within the boundaries of the West Douglas Herd Management Area, in compliance with the WHBA which requires wild horses be restricted to the habitat occupied in 1971.

**56. Comment: Your stance of not being able to create stipulations for existing oil and gas leases does not reflect contemporary and proper management. This is an area of multiple use and multiple values. Many changes have been made and continue to be made to oil and gas field rules in the San Juan Basin in order to protect other values.**

**Response:** All of the information within past planning documents were based on current information and anticipated impacts. Renewal of the Twin Buttes Grazing Permit was in accordance with current regulation, guidance and within the current land use plan. The previous

Amendment discussed eight alternatives for horse management ranging from, not managing for horses (Continue Current Situation) to a maximum of 643 horses. The decision within this document found that, "All of the alternatives for retention of horses rely on "Oil and Gas lease stipulations" to maintain key habitat for horses. Currently 93 percent of the area is leased and there is no opportunity to place new stipulations on these leases, until they expire. Of the 7 percent that are not leased, 4 percent are within the currently preferred horse habitat (Texas Mountain). These currently un-leased parcels, if leased with the proposed stipulations, would not protect enough of the key wild horse habitat to maintain a balance of seasonal ranges. Application of well specific mitigation will not maintain habitat or protect horses during critical periods such as foaling. Without lease stipulations BLM cannot protect the habitat needed for wild horses, requisite to the requirement of maintaining a "thriving natural ecological balance." The current amendment analyzes maintaining a herd of 29-60 horses without lease stipulations, instead relying on site specific stipulations. This is described on page 7, and states:

> 43 CFR 3101.1-2: The lessee of an existing oil and gas lease "shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification of sitting or design of facilities, timing of operations, and specifications of interim and final reclamation measures. **At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year."**

The San Juan Basin is also subject to these stipulations.

**57. Comment: Though it may be true that current oil/gas leases and grazing allotments not now up for renewal are legally exempt, for the time being, from any new stipulations that could translate into greater wild horse herd numbers and health, such exemptions could have been foreseen before additional leases were sold or during recent grazing allotment renewal/review procedures. The fact that opportunities were bypassed—perhaps repeatedly and blatantly—to add either horse-herd-supportiveoil/gas activity stipulations or lower livestock AUMs in the horse herd area show the low priority the herd has had in White River RMP planning, past and present.**

**Response:** All of the information within past planning documents were based on current information and anticipated impacts. Renewal of the Twin Buttes Grazing Permit was in accordance with current regulation, guidance and within the current land use plan. Most of the herd area was leased prior to passage of the Wild and Free Roaming Horse and Burro act.

**58. Comment: Neither oil and gas development, nor the clearly expressed interests of the oil-friendly Bush administration should be the rationale for destruction of what clearly can never be replaced. We expect the BLM to primarily be accountable to the American Public, in whose behalf public lands are managed. To that end, we are writing to emphatically urge you to withdraw EA WRFO-05-083, and instead to work on long-term management for the future which includes size and diversity of herds, and preservation of their historical habitat.**

**Response:** Withdrawal of this Environmental Assessment would be to continue with the current Land Use Plan for the total removal of this herd and to continue to manage the Piceance/East Douglas Herd Management Area. This will meet your request that "long term management for the future which includes size and diversity of herds and preservation of their historical habitat."

The Piceance/East Douglas Herd Management Area contains 93% of the habitat, and greater horse numbers than existed at the passage of the WHBA.

## Wildlife

**59. Comment: ….the EA establishes that the proposed HMA does not protect but harms the natural ecological balance of wildlife inhabiting the herd area. It is clear, therefore, that BLM cannot manage the proposed wild horse AML and protect the natural ecological balance of big game and blue grouse habitats. The anticipated adverse impacts are significant, including harm to critical big game habitat and to understory conditions which are below recovery thresholds and inconsistent with RMP objectives.**

**Response:** The intent and purpose of the EA is to objectively evaluate the effects of the proposed and alternative actions on wildlife habitat and populations within the herd area. These influences are more appropriately viewed as resource tradeoffs that are considered in BLM's multiple-use decision process. The analysis does not identify any significant impacts to wildlife as defined in the National Environmental Policy Act.

**60. Comment: EA CO-WRFO-050-83 acknowledges the Colorado Division of Wildlife (CDOW) has exceeded long term elk populations objectives by 2 to 3 times. Again, we can only ask why? This information was not analyzed in the EA…**

**Response:** This comment, more accurately, should state that elk have exceeded CDOW's population objectives by a factor of 2 or 3. Burgeoning elk populations are a phenomenon that affects all of northwest Colorado, but these figures apply to the entire elk Data Analysis Unit (including Game Management Units 21, 22, 30, 31, and 32). Although elk populations are elevated in the Herd Area, elk-related effects are more pronounced at higher elevations and in areas with a greater preponderance of privately controlled lands (e.g., southeast Piceance Basin, western Roan Plateau, White/Colorado River Divide). Further, the limited and insular nature of summer range extent in the Oil Spring/Texas Mountain complex likely operates to constrain population increases to levels lower than the potential for a Data Analysis Unit-wide population response.

BLM properly addresses the influence of, and current discrepancies among, big game populations as an existing character of land now occupied by horses in the West Douglas area (page 34). Big game populations that exceed established objectives are not analyzed in this EA because the situation is not intentional is considered temporary, and as stated in the text, CDOW is actively attempting to reduce populations to objective levels through sport harvest. This issue was also presented and addressed in public comments received for EA CO-WRFO-03-050. BLM's earlier response to Comment #91, page L-27) remains appropriate:

> "In addition, and as discussed in the text, increased seasonal elk use has been compensated in part by low current deer populations. These and some of the factors listed in the paragraph above (e.g., forage use outside the herd area, plastic response to prevailing forage conditions) contribute to the fact that elk have assumed population levels beyond established objectives. However, there is no thought by wildlife managers in northwest Colorado that current elk populations are desirable or sustainable in the long term. As discussed in the text, CDOW is actively seeking to install innovative and aggressive methods to reduce elk populations in GMU 21."

**61. Comment: This information was not analyzed in the EA along with alternatives concerning predator management…**

**Response:** This issue was presented and addressed in public comments received for EA CO-WRFO-03-050. BLM's earlier response to the issue of predator management (comment #90, page L-26) remains appropriate:

> "A discussion of predator-prey relationships in the context of horse management in the herd area is not considered relevant.
>
> Although substantial efforts are now underway to develop science-based large predator management plans in Colorado, the Colorado Division of Wildlife does not maintain Unit-specific bear and lion population estimates at this time. Based on long-term harvest statistics, large carnivore populations throughout the State are considered viable and stable. Although it is certain that these carnivores occasionally and opportunistically predate horses, there is no reasonable expectation that black bear and mountain lion would exert significant influence on overall horse populations or annual recruitment (i.e., consistent at 20%), especially in light of the availability and abundance of alternate big and small game prey in northwest Colorado."

**62. Comment: BLM fails to note that at the time of passage of the Act elk numbers were listed at an insignificant 7 animals. Either that translates into poor census data, or BLM has supported, or at the very least ignored the impact of CDOW managing the elk herd as a commodity and the impacts to "drought stricken" BLM administered public lands.**

**Response:** BLM is uncertain about elk population figures presented by the commenter. Based on historical Colorado Division of Wildlife information (available at the WRFO office), Game Management 21 summered about 75-80 elk and wintered about 100 elk as early as 1973.

Regardless of historical big game populations, BLM does not believe Game Management Unit 21's elk populations 34 years in the past are relevant to this discussion. Consistent with the intent of a number of laws and policies (e.g., Sikes Act, Fish and Wildlife Coordination Act), but primarily the Federal Land Policy and Management Act (FLPMA), BLM strives to accommodate State-desired big game population objectives. The State's big game population objectives have been consistently used as the basis for impact analyses, and elk have remained a featured management species, since the inception of BLM land use planning in 1974 (i.e., Management Framework Plan). The BLM discusses elk-related influences as they pertain to baseline conditions in the West Douglas Herd Area on page 34 of the EA.

**63. Comment: BLM fails to elaborate on CDOW's attempt "to install innovative and aggressive methods to reduce elk populations in GMU 21 with the 2004 season", page 34 of EA.**

**Response:** It is not within the scope of this document to present, discuss, or evaluate CDOW's big game management strategies or philosophies. The statement is considered sufficient to convey CDOW's intent and desire to reduce elk populations to objective levels that have been established through formal public involvement and review processes.

**64 Comment: BLM neglects to research the impacts on the vegetation of a growing elk population as well as CDOW endeavors to increase the deer population by 50%. WRFO BLM did not address these actions as to their impacts to wild horses, livestock grazing, as well as the energy industry.**

**Response:** CDOW's most-current big game population objectives formed the basis for impact analysis throughout the White River RMP (ROD page 2-27), and the effects of big game management on vegetation, livestock, wild horses, and energy management were appropriately analyzed in the RMP. Current deviations in big game populations from objective levels was presented in this (page 34) and preceding EA CO-WRFO-03-050 (page 37) and formed the basis

for impact analyses (i.e., the influence of proposed horse management on big game) under a range of alternatives.

This issue was, in part, presented and addressed in public comments received for EA CO-WRFO-03-050. Several of BLM's earlier responses (e.g., comments #88 and #91, pages L-26 and L-27) remain appropriate:

> Response to Comment 88: [GMU 21 deer population objective] "..was derived directly from the Colorado Division of Wildlife's long-term herd management objectives used in the RMP. Deer and elk population objectives have remained static since that time."
>
> Response to Comment 91: "Because the BLM allocates an average 50% of the annual above ground forage production among predominant grazing users, the total forage base is presumably capable of supporting more animals than those that BLM allocates for. However, this level of forage use would be incapable of accommodating other land values for which BLM is obliged to manage (e.g., see Colorado Public Land Health Standards 1 and 3; White River Record of Decision and Approved Resource Management Plan, page 2-11: "..watershed protection, visual resource enhancement, and food and cover requirements of small game and nongame wildlife species."). In addition, and as discussed in the text, increased seasonal elk use has been compensated in part by low current deer populations. These and some of the factors listed in the paragraph above (e.g., forage use outside the herd area, plastic response to prevailing forage conditions) contribute to the fact that elk have assumed population levels beyond established objectives. However, there is no thought by wildlife managers in northwest Colorado that current elk populations are desirable or sustainable in the long term. As discussed in the text, CDOW is actively seeking to install innovative and aggressive methods to reduce elk populations in GMU 21."

## Wilderness

**65. Comments: In preparing an amendment to the current RMP, BLM is obligated to account for any significant new information or circumstances…**

**BLM Response:** Per BLM IM-2003-275, *"the BLM must review the new information only when it is relevant to a pending decision or its environmental effects" (emphasis added)*. In the case of West Douglas Herd Area Plan Amendment (CO-EA-05-083), the proposed actions pertain to, in its most simple form, to retain a wild horse herd or remove all wild horses from the West Douglas Herd Area. As stated in the document, neither of these actions impact wilderness resources such as naturalness, primitive and unconfined recreation or opportunities for solitude and therefore the new information need not be reviewed for these actions.

**66. Comment*:* While the BLM asserts that "Removal of wild horses would allow for improvement of within [sic] northeastern portions of the Oil Springs Mountain WSA, they have not provided monitoring data from that portion of the WSA in any planning documents evaluated by the CWHBC within the past 14 years.**

**Response:** Vegetation data depicted in the West Douglas Herd Area Plan Amendment (CO-EA-05-083) is summarized and no site specific data is detailed in the current analysis. BLM cannot suppose what documents CWHBC has evaluated within the past 14 years and therefore cannot provide a response.

**6.7 Comment: CWHBC is completely opposed to any fence, trap building and oil and gas development in the Oil Springs Mountain WSA.**

**Response:** Neither alternative described in the West Douglas Herd Area Plan Amendment (CO-EA-05-083) proposes construction of a fence, trap or oil and gas development within the Oil Spring Mountain Wilderness Study Area proposed.

**68. Comment: In balancing the irreparable harm to wilderness values, caused by increased wild horse impacts in the WSA, BLM would likely be forced to build a fence.**

**Response:** In neither alternative within the West Douglas Herd Area Plan Amendment (CO-EA-05-083) is a fence through the Oil Spring Mountain Wilderness Study Area proposed.

## Socioeconomic

**69. Comment: The discussion under "Unit Costs of the Wild Horse and Burro Program" needs to be corrected. I know were the data came from, and I must say that the person working the data did not understand the data and/or wanted to make the picture as ugly as possible.**

**Response:** The subject of unit costs has been discussed with the respondent several times. A sophisticated econometric approach was taken to determine the magnitude of difference between costs of each alternative. This approach combined both a population model and cost model to determine the economic consequences of each alternative. MIS figures were used because they were both documented and verifiable. The model was in fact run using the unverifiable and undocumented data suggested by the respondent and produced no significant difference in the result.

**70. Comment: Lastly, no wonder legislators are looking at the cost of the wild horse program as managed by BLM. One example is your projected cost of $499,000 to gather and adopt out 120 horses (page 67).**

**Response:** The cost of gathering and adopting wild horses becomes greater with each animal. Ultimately gathering is necessary to prevent the horses from over utilizing the available required resources. Since costs increase per unit, maintaining no herd or managing a relatively small one produces the lowest management costs.

**71. Comment: The current EA states big game hunting is an important income generation activity in Rio Blanco County. In the preceding paragraph the EA states agricultural expenses are greater than its income. BLM did not comprehensively analyze these impacts nor any other use of public lands. With the population of western Colorado increasing, hiking, mountain biking, wildlife photography and others all contribute to the local economy. Income which could be generated by public viewing of wild horses was also not analyzed. The potential for solitude and prime recreational opportunities would be enhanced with the continued existence of wild horses in this area. If data submitted for the EA is correct, it appears that BLM efforts in continuing to promote livestock grazing, as it is currently administered for this area, is a tremendous financial drain on the economy of the county as well as valuable BLM resources. BLM also fails to analyze the impacts of oil shale development on the Piceance-East Douglas Wild Horse Herd, which could significantly impact habitat, biotic needs and long term genetic viability, which could potentially place the White River Field Office in the position of not having a wild horse herd.**

**Response:** This comment appears to question the scope of the EA rather than the scope or veracity of the socio economic section. The data suggest that the current and projected social and economic impacts of wild horse viewing in the studied area are not significant at any beyond the most micro level especially given the abundance of wild horses within the broader planning area. The scope of the change occurring in Western Colorado is important background to the

decision making process. No data however is evident which connects a significant amount of recreation to the continued existence of the West Douglas Herd. No analysis of oil shale impacts on the Piceance/East Douglas Herd Management Area is included as this area is outside of the geographic scope of this planning area (page 1).

## Visual Resources:

**72. Comment: …Affected Environment section should describe what visual resources are present in this and other areas throughout the herd area, and not merely state what the BLM's objectives are and whether they are being met.**

**Response:** The BLM is unsure of what is meant by "what visual resources are present" other than to say that all management actions within a given Visual Resource Management (VRM) class must meet VRM objectives as defined by the Resource Management Plan. In the case of proposed actions described within the West Douglas Herd Area Plan Amendment (CO-EA-05-083), none will cause RMP defined VRM objectives to be exceeded.

## MINERALS:

**73. Comment: Making lands available for oil and gas leasing is of itself a significant action that requires in-depth and site-specific analysis. Before irretrievably committing these lands to gas development, BLM should inventory them for wilderness potential. The Citizens' Wilderness Proposal must be considered prior to committing the area for natural gas leasing. Through this plan amendment, BLM has the authority over whether or not these lands are even to be made available for such leasing. NEPA requires that federal agencies take a "hard look" at the potential environmental impacts of the proposed action. NEPA requires the preparation of an environmental impact statement (EIS) when major federal actions significantly affect the quality of the human environment (42 USC § 4332(2)(C)).**

**Response:** Oil and gas leasing decisions were fully analyzed in the White River RMP/EIS, and are beyond the scope of this environmental assessment.

**74. Comment: BLM's WO IM No. 2004-194 requires BLM to consider and apply "Best Management Practices" (BMPs) that may lessen the impacts of oil and gas development. The practices discussed in this IM specifically include drilling multiple wells from a single drill pad and could also include directional drilling, which would permit leasing with application of NSO stipulations (with drilling from outside the protected area), while preserving wilderness characteristics. Other protective measures, such as closed loop (or pitless) drilling can help to protect the condition of soils and water.**

**BLM did not consider any new protective measures for development and inexplicably dropped the all proposed new oil and gas stipulations presented in the 2004 WDHA EA from any consideration altogether. The main difference we see between the Alternative B in this EA and Alternative C, which was analyzed in the 2005 WDHA EA is that the previous analysis would have added new stipulations "when and if deemed necessary." 2004 WDHA EA at 8. The new lease stipulations analyzed in the 2004 WDHA EA would have placed reasonable timing and surface use restrictions on development aimed at preserving the character of the preferred horse habitat (an area also used by wildlife).**

**Response:** The subject of WO IM No. 2004-194 is integration of Best Management Practices (BMPs) into the processing of Applications for Permit to Drill (APDs). These are post leasing actions. BMPs were identified as "Conditions of Approval" that would apply on a case by case

basis to specific surface disturbing activities, in the Appendix B to the White River Record of Decision and Approved Resource Management Plan. Most of the Herd Area lies within an established natural gas production area (the Douglas creek Arch). As noted in the EA, 93 percent of the area has been leased based on previous leasing decisions, some of which predate the 1971 Wild and Free Roaming Horse and Burro Act. Because of the fact that approximately 30 percent of the area is unitized, and approximately 84% of the leases in the area are held by ongoing production, few, if any of the leases would be expected to expire or terminate over the life of the amendment. Since new stipulations may not be added to existing leases, an alternative which would rely on the imposition of such new stipulations could not be implemented. In light of this fact, it was determined that an alternative which relies on incorporating reasonable Conditions of Approval, as defined at 43 CFR 3101.1-2, based on the BMPs identified in the White River RMP would be more reasonable.

**75. Comment: As discussed in *Drilling Smarter: Using Directional Drilling to Reduce Oil and Gas Impacts in the Intermountain West* (attached as Exhibit 8), directional drilling is feasible and economical in virtually any geologic setting, including Oil Spring Mountain"… "This EA dismisses out of hand, without any citations, sources, or explanation the use of directional drilling or other new technologies"… "Certainly the cursory dismissal of these technologies for the WDHA is not in keeping with the Department of the Interior policies promoting industry innovation. We contend that, even with existing technology, the industry is capable of drilling directionally. Finally, BLM has itself acknowledged that directional drilling is feasible on other oil and gas projects.**

**Response:** We cannot comment specifically on the *Drilling Smarter* document since it was not received with the comment letter. However, the comments on these three pages tend to imply that by not specifically mentioning specific new technologies, we would not be utilizing them. This is not true. We encourage new technologies, and require or approve of their uses on a case by case basis. Specific technological advances are not imposed in an RMP. Rather, the plan identifies restrictions to use of the surface, based on resource concerns, which are then applied at the leasing stage as stipulations. It is left to the lessee to identify appropriate practices to develop their lease, in compliance with those restrictions, at the permitting stage. As noted previously, most of the area has been leased under decisions that did not preclude surface occupancy. NSO stipulations cannot now be added. However, new technologies consistent with lease rights granted can be imposed and/or utilized as they are developed, through conditions of approval attached to a specific APD.

Directional drilling is currently taking place in several areas under our jurisdiction. However, contrary to the statement attributed to the missing document, directional drilling is not universally feasible or economical. Characteristics of the geologic formations, depth to the reservoir, and topography are important considerations that may constrain the use of directional drilling.

**76. Comment: As detailed above, there are a number of highly connected actions – several full field development projects, exploratory drilling and seismic tests, and interstate pipelines – that are likely to differ significantly from the level of development anticipated by the BLM in the 1980's and which are likely to significantly alter the cumulative impacts study undertaken nearly 20-years ago in the GJFO RMP"… "This EA, however, makes no attempt whatsoever to question the assumptions laid out in the RMP, when all manner of circumstances pertaining to oil and gas development were significantly different. These significant changes include (but are in no means limited to), changes in technology, changes in spacing patterns, changes in economics, and changes in transportation facilities and other infrastructure, and that the RMP/EIS at the outset assumed there would be no wilderness character or wild horses in the Texas Mountain area for which the BLM might reasonably choose to manage for.**

**Response:** While the GJFO (i.e. Grand Junction Field Office) RMP may have been completed nearly twenty years ago, and been based on an RFD prepared in the 1980s, the area analyzed in

this EA is managed under the White River RMP. This latter plan was completed less than ten years ago. The related RFD was prepared in 1995. The WDHA lies within an area referred to as the Douglas Creek Arch. The RFD assumed that approximately 737 wells (or roughly 37 wells per year) would be drilled in this area over the twenty year life of the plan. To date, actual development has been slightly less than this, and the assumptions for this area remain valid. This was spelled out in the planning criteria for development of this EA.

**77. Comment: Your stance of not being able to create stipulations for existing oil and gas leases does not reflect contemporary and proper management. This is an area of multiple use and multiple values. Many changes have been made and continue to be made to oil and gas field rules in the San Juan Basin in order to protect other resources.**

**Response:** An oil and gas lease is a contract between the lessee and the federal government. It is issued subject to stipulations based on land use planning decisions in effect at that point in time. While we cannot diminish the rights we have conveyed, we can impose reasonable conditions on the lessees enjoyment of that lease where resource concerns warrant. In this particular instance, we cannot impose new stipulations, and any alternative that relies on doing so could not truly be implemented. However, we can, impose conditions of approval, consistent with lease rights granted, at the time of permit issuance.

**78. Comment: Upon review of APDs (Applications for Permit to Drill), issued after the passage of the Act and before the first land use planning decision in the January, 1980 MFP, we find there were no stipulations placed to protect wild horse sensitive habitat… .**

**Response:** Stipulations are specific to oil and gas leases, and must be imposed at lease issuance. Any lease issued prior to passage of the Act would have no such stipulation. To be included in the lease, a decision to do so would be developed through the land use planning process, where sensitive habitats would be identified.

**79. Comment: Only one oil and gas company to date has stated concerns that wild horses in the West Douglas Creek area may impact their operations. Encana Oil and gas employees indicated they were informed by WRFO Acting Field Office Manager Jim Cagney, that the company should protest long term management of the West Douglas Creek herd due to potential impacts to their operations.**

**Response:** During public meetings prior to the preparation of this EA EnCana representatives expressed concern over the imposition of new stipulations on existing leases, as a result of any amendment that would lead to managing the herd. They were concerned that new stipulations would diminish their rights and the value of their leases, not that wild horses per se would impact their operations. We have no record of any comments made by any WRFO employees, encouraging EnCana to protest long term herd management.

**80. Comment: Just because leases exist it doesn't mean they will be utilized. Even if the drilling activity moves into the herd area it is not reason to reduce the herd at all from the present count of 120 on a 123,389 acre parcel. It's obvious the entire area is not going to have drilling activity on it.**

**Response:** It is true that leasing does not necessarily result in drilling. However, drilling has taken place to varying degrees in most parts of the herd area. While some parts of the HA may never be drilled in the future, we must consider how past drilling may effect the feasibility of managing horses, and herd size is a part of that consideration.